



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

March 11, 2009

MEMORANDUM FOR HEADS OF DEPARTMENTS AND FEDERAL AGENCIES

FROM:

Nancy Sutley
Chair

SUBJECT: REPORTING NEPA STATUS AND PROGRESS FOR RECOVERY ACT
ACTIVITIES AND PROJECTS

The President has made clear that every taxpayer dollar spent on our economic recovery must be subject to unprecedented levels of transparency and accountability. In Section 1609 of the "American Recovery and Reinvestment Act of 2009" (Recovery Act) Congress found that the National Environmental Policy Act (NEPA) process protects public health, safety and environmental quality by ensuring transparency, accountability and public involvement in federal actions and in the use of public funds. Congress directed that adequate resources under the Recovery Act "must be devoted to ensuring that applicable environmental reviews under [NEPA] are completed on an expeditious basis and that the shortest existing applicable process under [NEPA] shall be utilized." Recovery Act Section 1609(b). To ensure transparency and accountability in the implementation of the Recovery Act, Section 1609 further provides:

(c) The President shall report to the Senate Environment and Public Works Committee and the House Natural Resources Committee every 90 days following the date of enactment until September 30, 2011 on the status and progress of projects and activities funded by this Act with respect to compliance with National Environmental Policy Act requirements and documentation.

To satisfy Section 1609(c) reporting requirements, Executive Branch departments and agencies must report to CEQ, the status and progress of NEPA compliance on all Recovery Act funded projects and activities that are reported to OMB pursuant to OMB implementing guidance for the Recovery Act. CEQ is working with OMB to incorporate the Section 1609(c) reporting requirements into upcoming OMB guidance so that agencies have a one-stop resource for implementing all reporting requirements.

This memorandum sets forth the reporting requirements with which Executive Branch departments and agencies must comply in order to satisfy Section 1609(c) of the Recovery Act. Specifically, the federal agency funding the project or activity under the Recovery Act will be responsible for reporting the status of all NEPA compliance associated with the project or activity – including any environmental review and documentation prepared by an approving or permitting agency, a grantee or a contractor. Attached is a reporting template and explanatory guidance for Section 1609 reporting.

CEQ encourages all departments and agencies to demonstrate environmental stewardship and their commitment to the sustainability goals of Recovery Act provisions by ensuring that

environmental reviews and informed decisionmaking guide the implementation of Recovery Act activities and projects. Many agencies have a backlog of “shovel ready” projects, which have completed environmental analyses and are fully permitted, approved, and ready for implementation. For any projects and activities for which necessary environmental activities and permits have not been completed, agencies should ensure that they address these outstanding compliance issues as quickly as possible.

Recovery Act implementation should proceed expeditiously and in compliance with all environmental, health and safety requirements. In order to comply with NEPA, departments and agencies can: (a) ensure proposals that can potentially be categorically excluded have been or are being reviewed for extraordinary circumstances (40 C.F.R. 1508.4); (b) use concise and focused environmental assessments (40 C.F.R. 1508.9(b)); (c) prepare programmatic analyses in cases where consolidated analysis of similar, connected, or cumulative proposals will facilitate efficient compliance with NEPA (40 C.F.R. 1502.4(c), 1502.20, and 1508.28); (d) review other federal agencies’ NEPA analyses and documentation for the project or activity for potential adoption (40 C.F.R. 1506.3); and (e) engage CEQ to address any specific NEPA compliance concerns and issues.

In addition, departments and agencies should proactively comply with all applicable environmental statutes – such as the National Historic Preservation Act, Endangered Species Act, Clean Water Act – and environmental requirements – such as the energy and water efficiency, renewable energy, and sustainable buildings requirements of Executive Order 13423 (Strengthening Federal Environmental, Energy, and Transportation Management) – to ensure efficient development of Recovery Act projects and activities.

All departments and agencies provided Recovery Act funding should assess the need for permits and approvals, and effectively and promptly coordinate with the permitting and approval agencies to allow them to plan how to best assist in implementing Recovery Act projects and activities.

Finally, any department or agency that identifies a project or activity experiencing substantial delays in completing NEPA reviews and documentation should immediately notify CEQ by sending a message to recovery@ceq.eop.gov, which identifies the project, its current status, all known reasons for the delay, and a point of contact (name, title, organization, phone, cell phone and e-mail).

Attachments: Recovery Act Section 1609(c) Reporting Guidance
NEPA Section 1609 Report Template (2 Pages)

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RECOVERY ACT SECTION 1609(c) REPORTING GUIDANCE

Using the attached template, agencies should begin reporting the status of NEPA compliance activities to CEQ as soon as possible, but no later than April 7, 2009, with weekly updates on all activities and projects through April 28, 2009. The Section 1609(c) report through April 28, 2009, must be submitted no later than May 5, 2009. These reports should be submitted to CEQ at recovery@ceq.eop.gov. The first report to Congress will be submitted on May 18, 2009, and will report on the NEPA status and progress of projects and activities, which the Executive Branch departments and agencies have reported to OMB.¹ Subsequent Section 1609(c) reports will be provided to CEQ beginning July 15, 2009, and every 90 days thereafter.

To ensure the information quality of Section 1609(c) reports, the agency funding the project or activity under the Recovery Act will be responsible for reporting the status of all NEPA compliance associated with the project or activity – including any environmental review and documentation prepared by or for an approving or permitting agency, a grantee or a contractor. In those cases where more than one NEPA review is prepared, there will be more than one entry in the NEPA action, milestone, and date columns on page 2 of the attachment. In cases involving NEPA work performed by contractors, the agency funding the project or activity under the Recovery Act should work with the contracting officer to develop any necessary special contract provisions, if the contractor should provide the agency with information necessary for Section 1609 reporting.

The status and progress of each NEPA process will be reported by providing the latest milestone or determination at the time of the report.

- The determination that NEPA procedures are not applicable, will be reported on page 1 of the attachment. For example: (1) when there is no NEPA analysis or documentation required because there is no agency discretion for NEPA analysis; (2) when NEPA is statutorily waived (e.g. Clean Water Act Section 511(c)); or (3) when the activity or project is under another process that is functionally equivalent to NEPA (functional equivalence is limited to certain EPA programs such as CERCLA); then the total number of such determinations will be reported on page 1 of the attachment in the “NEPA Not Applicable” column with the total number of such projects or activities. There is no entry on page 2 for such projects or activities.
- Determination / initiation of a NEPA action that is pending will be reported on page 2 of the attachment by identifying the “Project/Activity Description (with ARRA Title/Program)” and leaving the subsequent columns blank.
- Categorical Exclusion (CE) status will be reported on page 2 of the attachment by citing the CE used and date completed. The date completed is the date of the document when the agency prepares documentation, or a date after the determination has been made that there are no extraordinary circumstances. The total of all actions using a CE is reported on page 1 of the attachment.

¹ See OMB guidance available at http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-10.pdf.

- Environmental Assessment (EA) status will be reported on page 2 of the attachment by providing the date of the milestone: (1) initiation (e.g., public involvement as practicable, if not practicable then date of intra/inter-agency involvement); (2) notice of FONSI (if required in accordance with 40 CFR 1501.4(e)(2)); or (3) completion of EA/FONSI (and any associated mitigation action plan). The total of all actions based on an EA/FONSI is reported on page 1 of the attachment.
- Environmental Impact Statement (EIS) status will be reported on page 2 of the attachment by providing the date of the milestone: (1) Notice of Intent; (2) EPA published notice of availability of the draft EIS; (3) EPA published notice of availability of the final EIS; (4) Record of Decision is completed (e.g., signed or published); or (5) appropriate date of any supplemental NEPA review and documentation. The total of all actions based on an EIS/ROD is reported on page 1 of the attachment.
- When all applicable environmental compliance requirements for the activity or project are completed – such as the National Historic Preservation Act, Endangered Species Act, Clean Water Act – enter a checkmark in the last column on page 2 of the attachment.

Executive Branch departments and agencies can report on either individual projects and activities or groups of projects or activities when the projects or activities are similar and comply with NEPA in the same way (for example: if a number of grants under the same grant program were categorically excluded under the same CE, the grants can be reported on one line on page 2 of the attachment).

Substantial delays in completing NEPA reviews and documentation should be reported to CEQ by sending a message to recovery@ceq.eop.gov that identifies the project, current status, all known reasons for the delay, and a point of contact (name, title, organization, phone, cell phone and e-mail).

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NEPA Update ARRA Section 1609 Report Data (sheet 2 of 2)

No.	Project/Activity Description (with ARRA Title/Program)	NEPA N/A	NEPA Action: Enter (1) Categorical Exclusion; (2) Environmental Assessment (EA); or (3) Environmental Impact Statement (EIS)	NEPA Milestone: For Categorical Exclusion enter NEPA Procedure Citation. For Environmental Assessment enter: (1) initiation; (2) FONSI notice; or (3) EA/FONSI. For Environmental Impact Statement enter: (1) NOI; (2) DEIS; (3) FEIS; (4) SEIS; or (5) ROD.	Date of the Milestone (ddmmyy)	All environmental reviews and documentation are completed.
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